

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>	)	<b>Chapter 11</b>
	)	
<b>W.R. GRACE &amp; CO., <u>et al.</u>,</b>	)	
	)	<b>Case No. 01-01139 (JKF)</b>
<b>Debtors.</b>	)	
	)	<b>(Jointly Administered)</b>
	)	
	)	<b>Regarding D.I. 4089</b>
	)	<b>Hearing Date: August 25, 2003, at noon</b>
	)	<b>Responses Due: August 8, 2003</b>

**RESPONSE OF CLAIMANT LUCY FONTENOT TO DEBTORS'  
SECOND OMNIBUS OBJECTION TO CLAIMS (NON-SUBSTANTIVE) [D.I. 4089]**

Claimant Lucy Fontenot, by and through their undersigned counsel<sup>1</sup>, files this Response to Debtors' Second Omnibus Objection to Claims (Non-Substantive), and in support thereof, respectfully states the following:

1. Claimant Lucy Fontenot is asserting an asbestos-related personal injury claim against Debtors arising from the death of her late husband, Gussie Fontenot, from asbestos-related lung cancer. Her claim number is 2513, dated on or about January 9, 2003.

2. Gussie Fontenot had, prior to his death filed a lawsuit against Debtor W.R. Grace and other defendants in Jefferson County, Texas, under the style *Gussie Fontenot v. Able Supply Co.*, No. A-061156, In the 58<sup>th</sup> Judicial District Court of Jefferson County, Texas. This lawsuit was continued by his representatives, including his widow, Claimant Lucy Fontenot, after Mr.

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<sup>1</sup> Claimant's counsel interprets Local Bankruptcy Rule 9010-1(c)(i) to except this response from the requirement of association with local counsel or formal admission *pro hac vice*, and this response is filed accordingly. In the event that this interpretation is incorrect, or the Court otherwise desires admission, Claimant's undersigned counsel will promptly act appropriately.

Fontenot's death on March 4, 2001. The lawsuit was still pending when Debtor filed for bankruptcy protection.

3. Contemporaneously with the filing of this Response, Claimant has filed an amended Proof of Claim with supporting documentation to show Mr. Fontenot's diagnosis with, and death from, asbestos-related lung cancer. A copy of the amended Proof of Claim is attached as Exhibit 1.

4. No bar date for asbestos-related personal injury claims has been set in this proceeding, nor have the procedures for filing such claims been established. (The Bar Order setting the March 31, 2003, bar date specifically excludes asbestos personal-injury claims.) Accordingly, Claimant does not yet know the nature and extent of documentation that will be required for her claim. It would unfairly prejudice Claimant to dismiss her claim at this point, before the requirements for asbestos personal-injury claims like hers have been ordered.


5. Claimant's asbestos personal-injury claim is for an unliquidated amount consistent with verdicts that have been awarded in other death cases related to lung cancer caused by asbestos.

6. Debtor also has objected to a duplicate claim erroneously submitted by Claimant, assigned claim number 2710. Claimant does not oppose the expunging of claim number 2710, so long as claim number 2513 survives.

WHEREFORE, Claimant Lucy Fontenot respectfully requests the Court to overrule Debtors' Second Omnibus Objection to claim number 2513 or, in the alternative, for leave to submit an amended claim prior to any applicable bar date containing additional supporting documentation to establish her asbestos personal-injury claim.

Dated this 7<sup>th</sup> day of August, 2003.


Respectfully submitted,

  
\_\_\_\_\_  
RUSSELL L. COOK, JR. & ASSOCIATES  
Russell L. Cook, Jr.  
Texas State Bar No. 04756500  
1221 Lamar, Suite 1300  
Houston, Texas 77010  
(713) 650-1221  
(713) 650-0521 (fax)

Of counsel:  
ARNEY LAW FIRM  
Lance C. Arney  
Texas State Bar No. 00796137  
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(713) 650-0521 (fax)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been served upon the following counsel by overnight delivery on this 7<sup>th</sup> day of August, 2003.

  
\_\_\_\_\_  
Lance C. Arney

Kirkland & Ellis LLP  
Attn: Janet S. Baer, James W. Kapp III, and  
Christian Lane  
200 East Randolph Drive  
Suite 6500  
Chicago, IL 60601

Pachulski, Stang, Ziehl, Young, Jones &  
Weintraub P.C.  
Attn: Scotta McFarland, Esq.  
919 N. Market Street, 16<sup>th</sup> Floor  
Wilmington, Delaware 19801

B10 (Official Form 10) (Rev. 04/01)

UNITED STATES BANKRUPTCY COURT For the District of Delaware		PROOF OF CLAIM
In re: <b>W.R. Grace &amp; Co. et al.</b>		Case Number: <b>01-1139 through 01-1200</b> (Jointly Adm.)
<small>NOTE: This claim should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>		
Creditor Name (Person or entity debtor owes): <b>Lucy Fontenot *</b> Address Line 1: <b>c/o Russell L. Cook, Jr.</b> Address Line 2: <b>1221 Lamar Street</b> Address Line 3: <b>Suite 1300</b> City, ST ZIP: <b>Houston, Texas 77010-3038</b>		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input checked="" type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
ACCOUNT OR OTHER NUMBER BY WHICH CREDITOR IDENTIFIES DEBTOR. <b>Cause No. A-161156 Fontenot v. Able Supply</b> <b>58th JDC, Jefferson Co., Texas</b>		THIS SPACE IS FOR COURT USE ONLY Check here if this claim <input type="checkbox"/> replaces a previously filed claim dated: <b>01-03-03</b> <input checked="" type="checkbox"/> amends
<b>1. BASIS FOR CLAIM</b> <input type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(n) <input type="checkbox"/> Services performed <input type="checkbox"/> Taxes <input type="checkbox"/> Wages, salaries, and compensation (Fill out below) <input type="checkbox"/> Money loaned <input type="checkbox"/> Other (Describe Briefly) _____ Your social security No. _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		<b>2. Date Debt Incurred: (MMDDYY)</b> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <b>Various Dates</b> <b>3. If Court Judgment, Date Obtained:</b> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div> <div style="border: 1px solid black; width: 40px; height: 20px; display: inline-block;"></div>
<b>4. CLASSIFICATION OF CLAIM.</b> Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.		
<input type="checkbox"/> <b>SECURED CLAIM</b> Attach evidence of perfection of security interest. Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other (Describe briefly) _____ Amount of arrearage and other charges at time case filed included in secured claim above, if any \$ _____		<input type="checkbox"/> <b>UNSECURED PRIORITY CLAIM - Specify the priority of the claim.</b> <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3) <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4) <input type="checkbox"/> Up to \$2,100 of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6) <input type="checkbox"/> Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(7) <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a) _____
<input checked="" type="checkbox"/> <b>UNSECURED NONPRIORITY CLAIM</b> A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.		
<b>5. AMOUNT OF CLAIM AT TIME CASE FILED:</b> <div style="display: flex; justify-content: space-around; align-items: flex-end;"> <div style="text-align: center;"> <div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>            (Secured)         </div> <div style="text-align: center;">           Unliquidated but at least  <div style="border: 1px solid black; padding: 2px;">1 0 0 0 0 0 0 0</div>            (Unsecured Nonpriority)         </div> <div style="text-align: center;"> <div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>            (Unsecured Priority)         </div> </div>		
<input type="checkbox"/> Check this box if claim includes charges in addition to the principal amount of the claim. Attach itemized statement of all additional charges.		
<b>6. CREDITS AND SETOFFS:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. In filing this claim, claimant has deducted all amounts that claimant owes to debtor.		THIS SPACE IS FOR COURT USE ONLY  <div style="border: 2px solid black; padding: 10px; text-align: center;"> <b>PLAINTIFF'S EXHIBIT</b>  <b>1</b> </div>
<b>7. SUPPORTING DOCUMENTS:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, or evidence of security interests. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
<b>8. TIME-STAMPED COPY:</b> To receive an acknowledgment of the filing of your claim, enclosed a stamped, self-addressed envelope and copy of this proof of claim.		
Date: <b>8-7-03</b>	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): <div style="text-align: center;">   <b>Lance C. Arney</b> </div>	

Penalty for presenting fraudulent claims: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 452 and 3571.

\*Lucy Fontenot, Individually &amp; Representative of the Estate of Gussie Fontenot

## STATE OF LOUISIANA

IMPORTANT:

PRINT or TYPE, black ink

or ribbon handwriting

836884

THIS RECORD IS VALID FOR DEATH ONLY

## CERTIFICATE OF DEATH

3485007

BIRTH No.

FILE No. 117

1A. LAST NAME OF DECEDENT <b>Fontenot</b>		1B. FIRST NAME <b>Joseph</b>		1C. MIDDLE NAME <b>Gussie</b>		2A. DATE OF DEATH (Month, Day, Year) <b>March 04 2001</b>	
2B. HOUR OF DEATH <b>9:00PM</b>		3. SEX <b>Male</b>		4. RACE (Specify) <b>White</b>		5. MARRITAL STATUS (Specify) <b>Married</b>	
6. DATE OF BIRTH (Month, Day, Year) <b>August 02 1927</b>		7A. AGE <b>73</b>		7B. MONTH <b>08</b>		7C. DAY <b>02</b>	
8. USUAL OCCUPATION (Kind of work done during most of working life) <b>Painter</b>		9. KIND OF BUSINESS (Industry) <b>Local #783</b>		10. BIRTHPLACE (City & State of Foreign Country) <b>Mamou, LA</b>			
11. USUAL RESIDENCE (Kind of work done during most of working life) <b>Painter</b>		12. SOCIAL SEC. NO. (If known) <b>438-24-9688</b>		13. DECEASED'S EDUCATION (Specify only highest grade completed) <b>12</b>		14. COLLEGE (If any) <b>No</b>	
15. PLACE OF DEATH (Specify if not in Parish, give street address or location) <b>6716 Bonne Meadow</b>		16. NAME OF FACILITY (If not in Parish, give street address or location) <b>Lake Charles</b>		17. PLACE OF DEATH IN CITY (Specify if not in Parish) <b>Yes</b>		18. PARISH OF DEATH <b>Calcasieu</b>	
19. CITY, TOWN OR LOCATION OF DEATH <b>Lake Charles</b>		20. STREET ADDRESS OF HOME (Specify if not in Parish, give street address or location) <b>6716 Bonne Meadow</b>		21. PARISH OF RESIDENCE <b>Calcasieu</b>		22. STATE OF RESIDENCE <b>Louisiana</b>	
23. USUAL RESIDENCE OF DECEDENT (City, town or location) <b>Lake Charles</b>		24. ZIP CODE <b>70605</b>		25. RESIDENCE (Specify if not in Parish, give street address or location) <b>Yes</b>		26. PARISH OF RESIDENCE <b>Calcasieu</b>	
27. FATHER'S LAST NAME <b>Fontenot</b>		28. FATHER'S FIRST NAME <b>Arcade</b>		29. FATHER'S PLACE OF BIRTH <b>u/a</b>		30. STATE OF BIRTH <b>LA</b>	
31. MOTHER'S LAST NAME <b>Blanchard</b>		32. MOTHER'S FIRST NAME <b>Eda</b>		33. MOTHER'S PLACE OF BIRTH <b>u/a</b>		34. STATE OF BIRTH <b>LA</b>	
35. TYPE OF PRINT NAME (If Informant) <b>Mary L. Fontenot</b>		36. ADDRESS OF INFORMANT <b>6716 Bonne Meadow</b>		37. DATE OF DEATH <b>March 04 2001</b>		38. DATE OF DEATH <b>Mar 04 2001</b>	
39. METHOD OF DEATH <b>1</b> <input checked="" type="checkbox"/> <b>2</b> <input type="checkbox"/> <b>3</b> <input type="checkbox"/> <b>4</b> <input type="checkbox"/> <b>5</b> <input type="checkbox"/> <b>6</b> <input type="checkbox"/> <b>7</b> <input type="checkbox"/> <b>8</b> <input type="checkbox"/> <b>9</b> <input type="checkbox"/> <b>10</b> <input type="checkbox"/> <b>11</b> <input type="checkbox"/> <b>12</b> <input type="checkbox"/> <b>13</b> <input type="checkbox"/> <b>14</b> <input type="checkbox"/> <b>15</b> <input type="checkbox"/> <b>16</b> <input type="checkbox"/> <b>17</b> <input type="checkbox"/> <b>18</b> <input type="checkbox"/> <b>19</b> <input type="checkbox"/> <b>20</b> <input type="checkbox"/> <b>21</b> <input type="checkbox"/> <b>22</b> <input type="checkbox"/> <b>23</b> <input type="checkbox"/> <b>24</b> <input type="checkbox"/> <b>25</b> <input type="checkbox"/> <b>26</b> <input type="checkbox"/> <b>27</b> <input type="checkbox"/> <b>28</b> <input type="checkbox"/> 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## CYTOLOGY REPORT

PATH #: C98-821	PATIENT: GUSSIE FONTENOT	FILE #: 104771
SERVICE: 8/20/98	DOB: 8/02/27 (71) SEX: F RACE:	ACCT #: S30353580
RECEIVED: 8/20/98	PHYSICIAN: CHARLES BRDLIK, M.D.	(318)491-7708
REPORTED: 8/21/98	LOCATION: ST PATRICK HOSPITAL	
PHYSICIAN: CARL NABOURS, M.D.		

CLINICAL DATA: RLL mass 6 x 3.5 x 2.5 cm, R/O lung ca.

DIAGNOSIS: FNA OF RIGHT LOWER LOBE:  
NON-SMALL CELL CARCINOMA WITH FEATURES OF  
ADENOCARCINOMA.

RECOMMENDATION: As clinically indicated.

GROSS DESCRIPTION:  
Fine needle aspirate of right lower lobe of lung submitted by  
radiologist.

FROZEN DIAGNOSIS: NON-SMALL CELL CARCINOMA.

MICROSCOPIC DESCRIPTION:  
Cytospin and cell block preparations of FNA of right lower lobe of  
lung show marked cellularity. Numerous aggregates of malignant  
cells and single malignant cells are noted. The cells show increased  
nuclear cytoplasmic ratios and marked irregular nuclei with prominent  
irregular nucleoli. Gland formation is seen.

ADEQUACY: Satisfactory.

RR/ar

ELECTRONICALLY REVIEWED

ROBERT RUMSEY, MD



NO. A-0161156

GUSSIE FONTENOT ) IN THE DISTRICT COURT OF  
 VS. ) JEFFERSON COUNTY, TEXAS  
 ABLE SUPPLY )  
 COMPANY, ET AL ) 58TH JUDICIAL DISTRICT

DEPOSITION OF  
 ARTHUR L. FRANK, M.D., PH.D.

JANUARY 24, 2001

ORAL DEPOSITION OF ARTHUR L. FRANK, M.D., PH.D.,  
 produced as a witness duly sworn by me at the  
 instance of the Defendants, taken in the above  
 styled and numbered cause on the 24th day of  
 January, 2001, before Kathy Miller, Certified  
 Shorthand Reporter No. 739 in and for the State of  
 Texas, at the Tremont House Inn, 2300 Ship's  
 Mechanic Row, Galveston, Texas 77550, pursuant to  
 the Texas Rules of Civil Procedure and the  
 provisions stated on the record or attached therein

EXHIBIT

C

ALL-STATE® INTERNATIONAL

KATHY MILLER (713) 961-0203  
 NELL MCCALLUM & ASSOCIATES, INC. HOUSTON, TEXAS

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02:40 PM

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EXHIBITS

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1	Curriculum Vitae	
2	Letter dated September 29, 2000 to Dr. Arthur Frank from Jeanie Gardner	
3	Medical Records pertaining to Gussie Fontenot from King White, M.D.	102

(Exhibits 1 and 2 were marked.)

1  
2 MR. DIMUZZIO: Read and sign, take it  
3 by the Rules?

4 MS. BARRON: Whatever he wants to  
5 do.

6 MR. MANNING: Can we have one  
7 objection good for all?

8 MR. DIMUZZIO: For now it's -- One  
9 for all is okay for now.

10 MS. BARRON: Other than perhaps  
11 proving up qualifications, your intention is not to  
12 follow us with a complete direct exam, is it?

13 MR. DIMUZZIO: Oh, no. That's the  
14 only thing that I do and I'm actually leaning  
15 towards not doing.

16 MS. BARRON: You can see where the  
17 problem is, though, if you passed and we went five  
18 hours, we have a slight problem with a trial direct.

19 MR. DIMUZZIO: Yeah. Trial direct  
20 will not happen, I'll guarantee you that.

21 MS. BARRON: Since you noticed it  
22 and are probably not going to ask questions, I don't  
23 want to be saddled with the original costs. What we  
24 normally do is divide the original cost among  
25 everyone that's ordering a copy.

02:41 PM

1

MR. DIMUZIO: That's fine.

2

MS. BARRON: Is that acceptable?

3

MR. DIMUZIO: That's acceptable.

4

MS. BARRON: Any objections?

02:41 PM

5

Otherwise, I ain't going with the first question.

6

(Discussion off the record.)

7

MR. DIMUZIO: And it's read and sign

8

and take it by the Rules.

9

ARTHUR L. FRANK, M.D., Ph.D.,

10

having been first duly sworn to testify the truth,

11

the whole truth, and nothing but the truth,

12

testified as follows:

13

EXAMINATION

14

BY MS. BARRON:

02:42 PM

15

Q. Dr. Frank, my name is Barbara Barron and

16

I'll be starting off the deposition with some of the

17

questions. I know some of the other ladies and

18

gentlemen in the room will also have questions for

19

you today and I'll move as quickly as I can. You

02:43 PM

20

have obviously given numerous depositions in the

21

past, correct?

22

A. Yes, ma'am.

23

Q. You understand the deposition protocol,

24

correct?

02:43 PM

25

A. Yes.

03:00 PM 1 case, did you get to see Mr. Fontenot?

2 A. I did not.

3 Q. Okay. Did you ever ask for the  
4 opportunity to see Mr. Fontenot?

03:01 PM 5 A. No.

6 Q. What materials did you review then?

7 A. They -- They're all here.

8 Q. Yeah.

9 A. And there's a long list of materials, 23  
03:01 PM 10 separate identified sets of information.

11 Q. And I've marked that exhibit, Exhibit 2,  
12 correct?

13 A. Correct.

14 Q. And that's a letter dated September 29th,  
03:01 PM 15 2000 to you, from Jeanie Gardner, the legal  
16 assistant to Russ Cook, with a CC to Gary?

17 A. Yes.

18 Q. Very efficient office. When were you  
19 hired or retained in this case?

03:01 PM 20 A. Probably about a year before, I was asked  
21 about if I would be available to work on this case.

22 Q. Is September of 2000 the first time you  
23 were sent any materials on the case?

24 A. I believe so. I think most of what I got  
03:02 PM 25 earlier was verbal, a description of the case, and

03:02 PM

1 then the records showed up.

2 Q. What description of the case do you  
3 remember receiving?

03:02 PM

4 A. It's probably been a year-and-a-half, but  
5 basically it was a gentleman with a lung cancer who  
6 had been involved with sandblasting, and had been  
7 exposed to asbestos.

03:02 PM

8 Q. Other than the medical records that you  
9 brought with you, have you reviewed anything else in  
10 this case?

11 A. No.

12 Q. Were you provided anything else from the  
13 plaintiff's office?

14 A. Other than verbally, no, I don't believe  
15 so.

03:02 PM

16 Q. How many conversations in total have you  
17 had on this case with the plaintiff's office?

18 A. Probably four or five, mostly setting up  
19 the deposition, probably one of substance.

03:03 PM

20 Q. And when --

21 A. Or two. One originally, and one very  
22 recently and very briefly.

23 Q. The one originally, how long did that  
24 conversation last?

03:03 PM

25 A. I don't recall. Probably not more than



03:03 PM

1 five minutes.

2 Q. And the one recently, that was very brief,  
3 how long did that last?

4 A. Not more than five minutes.

03:03 PM

5 Q. Was that today?

6 A. Yes.

7 Q. Was that right before the deposition?

8 A. Yes.

9 Q. What was discussed right before you came

03:03 PM

10 in today?

11 A. That I'd reviewed these records, and that  
12 I had an opinion about the cause of Mr. Fontenot's  
13 lung cancer.

14 Q. Did you review any X-rays?

03:03 PM

15 A. Now that I think about it, I was sent some  
16 copies of X-rays with the initial -- I don't have  
17 any X-rays in my possession. I think I was  
18 originally sent some X-rays. They were copies and  
19 sent them back and they were not suitable for  
20 evaluation.

03:04 PM

21 Q. Any CT scans?

22 A. No. I don't read CT scans.

23 Q. And why not?

24 A. Because I was not -- They didn't have CT  
25 scans when I did my medical training, and I'm not a

03:04 PM

1 radiologist and I haven't gone back and learned how  
2 to read CT scans, at least not officially. I would  
3 -- I would defer to a radiologist for those  
4 evaluations. I look at them, but I've not been  
5 formally trained to read them.

03:04 PM

6 Q. Do you think CT scans have any diagnostic  
7 value in diagnosing occupational lung diseases?

8 A. Yes. They tend to be better than PA chest  
9 X-rays for pleural disease.

03:04 PM

10 Q. Do you think they have value in both -- in  
11 diagnosing asbestos-related disorders and  
12 silica-related disorders?

13 A. They can have use in both. I think there  
14 -- in my own experience they're probably not any  
15 better for parenchymal disease. They're good for  
16 pleural disease and for things like egg shell  
17 calcifications in silicosis.

03:05 PM

18 Q. Do you believe they have a tendency to  
19 show rounded densities prior to when they would show  
20 on radiographs alone?

03:05 PM

21 A. I don't know. I have no opinion about  
22 that. I -- I just haven't found them nor do I find  
23 the literature documenting that they're especially  
24 useful for parenchymal changes. I'll still go with  
25 the chest X-ray. I think they're much better for

03:05 PM

03:05 PM

1 pleural changes that you can't see on the usual  
2 chest films.

3 Q. Did you ask anyone to review any of the CT  
4 scans in this case?

03:05 PM

5 A. No. There are CT scan reports in the  
6 records here. So, they eventually did show up.

7 Q. And how about pathology?

8 A. I am not a pathologist. I didn't review  
9 pathology. Whatever pathology I know about comes  
10 from the reports and the records.

03:06 PM

11 Q. And did you review plaintiff's deposition?

12 A. I did not.

13 Q. In terms of -- If you were to be sent a CT  
14 scan, would you have one of your colleagues take a  
15 look at it, at UT Tyler?

03:06 PM

16 A. Frankly, usually not because I'll read the  
17 reports that come with the records. If I am just  
18 sent the CT and there's some reason to, I might. I  
19 think -- I think in all the years, I may have had  
20 one CT looked at by a radiological colleague.

03:06 PM

21 Usually I'll rely on the reports that are in the  
22 records.

23 Q. Is there a radiologist at UT Tyler that  
24 you do confer with or consult with occasionally?

03:06 PM

25 A. Whoever is in the reading room I can get

03:06 PM

1 hold of.

2 Q. And how about pathology?

3 A. I don't think I've ever taken any  
4 pathology to a colleague at UT Tyler, because I  
5 don't get sent the pathology.

03:07 PM

6 Q. If a plaintiff attorney was to call you  
7 and ask that they -- ask you who they should send it  
8 to, who would you recommend?9 A. It depends on what the problem was. If it  
10 was an asbestos problem, I probably would recommend  
11 -- I would probably give several names, but what I  
12 usually start with or often go back to Dr. Suzuki  
13 who I trained with in New York, who I think is as  
14 experienced in this area as almost anybody.

03:07 PM

15 Q. Anyone in the southern region that you  
16 would recommend?17 A. I would probably bring up names of people  
18 I'm familiar with that look at these materials, but  
19 -- but probably not.

03:07 PM

20 Q. And how about if it's a silica related  
21 disorder?22 A. That's never occurred. I have never been  
23 asked about it, and I am not sure what I would do.  
24 I -- I'd probably call Dr. Suzuki and ask if he  
25 would look at it, because I just -- you know, I -- I

03:08 PM

03:08 PM 1 trust him.

2 Q. We were talking about when you were sent  
3 the materials by the plaintiff's law firm. Have you  
4 done any work in the past for the law firm that  
5 retained you in this case?

6 A. I have.

7 Q. And approximately how many cases have you  
8 been asked to look at for medical legal purposes?

9 A. Probably between five and ten.

03:08 PM 10 Q. And I know Gary sitting next to you used  
11 to be with another firm. Have you met him  
12 previously before today?

13 A. Yes.

14 Q. And have you ever had an opportunity to  
03:08 PM 15 review any cases from his prior firm?

16 A. Yes.

17 Q. And approximately how many cases would  
18 that have been?

19 A. In terms of a review of records, one or  
03:08 PM 20 two maybe.

21 Q. Is there anything else other than a review  
22 of records?

23 A. Looking at X-rays.

24 Q. How about looking at X-rays?

03:09 PM 25 A. I have looked at a considerable number of

03:09 PM

1 X-rays for his previous firm.

2 Q. How many people would you think total?

3 MR. DIMUZIO: Objection, form.

4 A. Probably more than 400.

03:09 PM

5 Q. (By Ms. Barron) Was that for screening  
6 purposes?

7 A. Basically. Yes. I mean X --

8 Q. How did --

9 A. All I got was an X-ray without a history,  
10 and was asked to make an assessment of it.

11 Q. Of those 400 that you looked at, do you  
12 know what your percentage of finding positive  
13 findings is?

14 A. About 1 in 20.

03:09 PM

15 MS. STUART: I'm sorry, I couldn't  
16 hear that.

17 A. 1 in 20, give or take. I mean, I -- you  
18 know, it's about -- It runs about that.

19 Q. (By Ms. Barron) Were you screening --  
20 Were those screenings predominantly for asbestosis  
21 or silicosis?

22 A. Both.

23 MR. DIMUZIO: Objection, form.

24 Q. (By Ms. Barron) Are you normally told  
25 what the screenings are for?

03:09 PM

A. No.

Q. Have you done any screenings for Russ Cook's law firm, for the law firm that's hired you for this case?

03:10 PM

A. Other than the number that I gave you of files that I have looked at, no screening in the sense of not having a history or disease or being asked to render a judgment about a particular case.

03:10 PM

Q. With regard to your review of the records in this case, after -- how much time did you spend reviewing the records?

A. That took about two hours.

Q. Trying to help you here.

A. Oh, maybe it was six. No.

03:10 PM

Q. With -- When you went through the records, were you looking for anything specifically?

03:11 PM

A. Yes. I mean, I am looking for any -- any description of exposures or work settings. I am looking for diagnoses that are related to the issues I have been asked to comment on. Clearly, Mr. Fontenot has a number of medical problems that are unrelated to the issues I have been asked to comment upon. I look for pathology reports. Being that I had not seen any original X-rays, I looked for X-ray reports which I often don't do if I get to

03:11 PM

1 read my own X-rays. I look for CT scan reports.  
2 That's predominantly it.

3 Q. Pulmonary function?

03:11 PM

4 A. I probably look at them, but it doesn't --  
5 it almost never -- It never makes the diagnosis for  
6 you and no matter what the results are, it doesn't  
7 make something become a diagnosis or exclude  
8 something. So, I don't put much stock in PFTs.

03:12 PM

9 Q. After you reviewed all the records, did  
10 you come to a conclusion that any additional testing  
11 needed to be done?

12 A. No.

03:12 PM

13 Q. Were -- Was there anything else that you  
14 thought you needed from the plaintiff's law firm in  
15 order to render an opinion in this case?

16 A. No. If I had thought so, I would have  
17 asked for it.

03:12 PM

18 Q. Have you ever had an opportunity at all,  
19 even on the phone, to talk to the plaintiff in this  
20 case?

21 A. No.

22 Q. Did you yourself ever take a history from  
23 the -- from the plaintiff?

03:12 PM

24 A. I did not. The first answer would have  
25 been expected to exclude the second, but, no.



03:12 PM

1 Q. Is it a fair statement that everything  
2 that you have seen in this case has been sent to you  
3 from the plaintiff's attorney?

4 A. Yes.

03:12 PM

5 Q. Is there anything that you have asked for  
6 that they've not provided to you?

7 A. No.

8 Q. You said the X-rays that you saw were poor  
9 quality?

03:13 PM

10 A. No. They were copies, not poor quality.  
11 I just, as a rule, don't read copies for  
12 pneumoconiosis unless they're extremely good copies  
13 or with some of the new equipment, the digital  
14 X-rays, they come out -- I mean, they're all copies,  
15 but they're good, quality X-rays.

03:13 PM

16 Q. Most hospitals nowadays will not release  
17 the originals.

18 A. That has occasionally been a problem when  
19 I've asked attorneys for them. I have learned that,  
20 yes.

03:13 PM

21 Q. In terms of your opinions in this case,  
22 what are those opinions?

23 MR. DIMUZIO: Objection, form.

03:13 PM

24 Q. (By Ms. Barron) Sorry. Easiest way to  
25 get it, and fastest.

03:13 PM

1

A. My opinion is that Mr. Fontenot has developed an adenocarcinoma of the lung, and that this resulted from three exposures that I'm aware of: Exposure to asbestos, exposure to silica, and exposure to cigarette smoke.

03:14 PM

5

6

7

Q. Do you believe Mr. Fontenot has asbestosis?

8

9

A. I have seen no evidence that would lead me to that diagnosis.

03:14 PM

10

11

12

Q. Do you believe he has silicosis?

A. Similarly, I've seen no information that would lead me to make that specific diagnosis.

13

14

Q. Do you believe based on reasonable medical probability that he has chronic obstructive pulmonary disease?

03:14 PM

15

16

A. He appears to have that.

17

18

19

Q. Based on reasonable medical probability, do you believe that he has asbestosis? I didn't throw that in earlier, that's why I'm having to reask.

03:15 PM

20

21

22

23

A. Not seeing any evidence for it, I can't believe he has a diagnosis for which I see no objective evidence.

24

03:15 PM

25

03:15 PM

A. Yes.

03:15 PM

Q. In terms of the literature on silica and cancer, were you sent any medical articles or literature from the plaintiff's attorneys in this case?

A. I was not.

03:16 PM

Q. On the topic of whether silica is a carcinogen, or whether there is any association between silicosis and lung cancer, have you been sent any information from any plaintiff's attorney?

03:16 PM

A. The most honest answer is: Not that I recall. That doesn't mean that sometime -- I mean, every once in a while a plaintiff's attorney will send me an article they think is of interest to me. It's happened with the asbestos work for a long time. It may have happened with the silica work, but I -- I don't recall receiving anything from a plaintiff's attorney regarding that issue.

03:16 PM

Q. In terms of your review of the medical records in this case, did you make any notes?

A. No.

Q. Do you have any notes on any of your conversations with the plaintiff's law firm?

A. No.

03:16 PM

Q. Other than what you brought with you

03:16 PM

1 today, and obviously some medical articles, is there  
2 anything else that you rely on in rendering your  
3 opinion that you just gave us?

4 A. No.

03:17 PM

5 Q. Has any lawyer from the law firm that has  
6 hired you for this case, have they ever been to your  
7 house?

8 A. Yes.

9 Q. On how many occasions?

03:17 PM

10 A. One.

11 Q. And have you ever been to any of their  
12 houses or homes?

13 A. No.

03:17 PM

14 Q. What is -- In terms of the three exposures  
15 that you believe contributed to his lung cancer, do  
16 you attribute a percentage to any of those causes?

17 A. I have no way of being able to identify a  
18 percentage that I can attribute to any one of those  
19 three causes.

03:18 PM

20 Q. What is your understanding of what the  
21 plaintiff did for a living?

22 A. He was a painter who also did  
23 sandblasting. One of the things left for me here  
24 out of all the records was a consultation done for  
25 one of your colleagues, I believe, which outlines

03:19 PM 1 his work history in pretty good detail. If you want  
2 me to review it briefly, and it will be on the  
3 record or not, but he worked as a sandblaster.

4 Q. Do you know whether he ever did any  
03:19 PM 5 residential painting?

6 A. Not specifically.

7 Q. Do you know whether he did any residential  
8 sheetrock work, floating and taping?

9 A. He did do that, but I don't know in which  
03:18 PM 10 setting.

11 Q. Do you know whether the plaintiff actually  
12 had any exposure to asbestos-containing material?

13 MR. DIMUZIO: Objection, form.

14 A. I have no direct evidence of that other  
03:19 PM 15 than the settings in which he worked in which one  
16 would have expected asbestos to be present. If he  
17 did sheetrock work and did taping and speckling as a  
18 painter, those compounds for many years contained  
19 asbestos. But if you ask me to identify any  
03:19 PM 20 particular product that he may have been exposed to  
21 or any particular type of asbestos, I can't do that.

22 MS. STUART: Object to nonresponsive  
23 to everything after "no direct evidence."

24 THE REPORTER: Can you give me your  
03:19 PM 25 name?

1 MS. STUART: Kim Stuart.

2 MS. BARRON: We can probably agree  
3 just to put defendants' objection by one is  
4 objection by anyone who later wants to assert it,  
5 which will make your job a little easier.

6 MR. DIMUZIO: (Indicating.)

7 Q. (By Ms. Barron) Did you see any  
8 indication in any of the records that you reviewed  
9 that plaintiff had any asbestos exposure?

10 A. Yes. There's lots in the records where  
11 doctors have commented that he had either probable  
12 exposure to asbestos or probable exposure to  
13 asbestosis, which is obviously not correct, but is  
14 not infrequently how it's listed in records.

15 Q. Do you recall seeing entries in the  
16 medical records where there was questionable, as  
17 opposed to probable, questionable exposure --

18 A. Yes.

19 Q. -- to asbestos? And if I understand what  
20 you were telling me earlier, because of what your  
21 understanding is from the medical records of what  
22 the plaintiff's jobs were, you're making a  
23 presumption, based on your experience, that you  
24 believe that he was exposed to asbestos?

25 A. Not just what his jobs were, but in some

03:21 PM 1 cases the settings for those jobs such as a  
2 shipyard. Shipyards are, in fact, known to be  
3 places where asbestos is commonly found.

4 Q. What shipyards did this plaintiff work at?

03:21 PM 5 A. I forget. I am not sure I ever knew  
6 specifically. Somewhere in the records, I believe,  
7 it said he did some of his work in a shipyard.  
8 Unless I am forgetting, it doesn't say that here in  
9 this record.

03:21 PM 10 Q. Is it your preference to actually see the  
11 plaintiff when you can?

12 MR. DIMUZIO: Objection, form.

13 A. Not really. If I have adequate  
14 information, I can render a judgment, and it both  
03:22 PM 15 saves money and time and discomfort for patients to  
16 have to travel to see me.

17 Q. (By Ms. Barron) Did you find the work  
18 history taken by Dr. Holland to be adequate?

19 MR. DIMUZIO: Objection, form.

03:22 PM 20 A. Without answering it -- I mean, it -- it  
21 gave me information that was useful to me. It's not  
22 necessarily how I would have taken it, but it was  
23 helpful in understanding what Mr. Fontenot had done.

24 Q. (By Ms. Barron) You have a form that you  
03:22 PM 25 use with plaintiffs that actually come to see you